

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.6388/Del./2017
Assessment Year: 2014-15

Sh. Vinay Kumar Dhingra (HUF), J-15, First Floor, Kirti Nagar, New Delhi	Vs.	ITO, Ward-49(1), New Delhi
PAN :AAFHV3779Q		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. Farhat Khan, Sr.DR

Date of hearing	07.06.2021
Date of pronouncement	28.06.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 23/08/2017 passed by the Learned Commissioner of Income Tax(Appeals)-17, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2014-15 raising following grounds:

- That the Id. CIT(A) has erred in law and on facts while upholding the decision of the Id. AO of making additions of Rs.41,00,925/- on sale of shares of Cressanda Solutions Ltd. as non- genuine LTCG without appreciating the submissions of the assessee. As such, the addition of Rs.41,00,925/- may please be deleted.*

2. *That the Id. CIT(A) has erred in law while not considering that the Id. AO has made an addition of Rs.41,00,925/- under section 68 of the Income Tax Act, 1961 without properly appreciating the supporting documents placed on record including allotment letter, acknowledgment of bank regarding request for dematerialization, contract note for sale, ledger account of assessee in the books of broker, Demat account etc. As such, the addition of Rs.41,00,925/- may please be deleted.*
3. *That the Id. CIT(A) erred in law and facts of the case while not appreciating that the addition made Ld. AO is merely on the basis of conjecture and surmises without bringing on record any specific cogent material against the assessee. As such, the addition of Rs.41,00,925/- may please be deleted.*
4. *That the Id. CIT(A) failed to appreciate that the Ld. AO has erred in law while making addition to the income of assessee without confronting the assessee with the alleged Statements or evidences wherein name of the assessee has been mentioned, on the basis of which allegation has been made that LTCG on sale of shares of Cressanda Solutions Ltd. of Rs.41,00,925/- is non-genuine. As such, the addition of Rs.41,00,925/- may please be deleted.*
5. *That the Id. CIT(A) has failed to consider while upholding the addition of Rs.2,10,046/- on account of brokerage or commission, being estimated @ 5% by the Ld. AO merely on the basis of presumption without even providing any opportunity to the assessee to provide explanation for the same. As such, the addition of Rs.2,10,046/- may please be deleted.*
6. *That the Id. CIT(A) has erred in law and on facts while upholding the decision of the Id. AO without considering the additional evidences filed by the assessee. As such the order passed by the Ld. CIT(A) is against the principle of natural justice and therefore, the addition of Rs.43,10,971/- may please be deleted.*
7. *That the assessee crave to add, alter, delete & modify any of the of hearing.*

2. Briefly stated facts of the case are that for the year under consideration, the assessee filed return of income on 31/07/2014 declaring total income of ₹ 8,28,390/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the

Act) were issued and complied with. In the return of income filed, the assessee has claimed Long-Term Capital Gain (LTCG) on sale of shares of M/s Smart Champ IT & Infra Ltd (which later merged with M/s Cressanda Solutions Ltd.) amounting to ₹ 41,00,925/- as exempt under section 10(38) of the Act. However, the Assessing Officer, on the basis of enquiries carried out by the Investigation Wing of Income Tax Department at Kolkata, and other facts and circumstances of the case like purchase through off-line route, dematerialization of the shares just before the sale, financials of the scrip company not supporting such high-value etc., held that transaction was a pre-arranged device for converting black money into tax exempted income. He, accordingly, in assessment order dated 29/12/2016, held the receipt by way of sales as unexplained credit in terms of section 68 of the Act. The conclusion of the Assessing Officer in paragraph 5.9 of the assessment order is reproduced as under:

“5.9 In view of the facts and circumstances discussed supra, it is concluded that the transactions were sham and aimed only to bring unaccounted money in the semblance of exempted long term capital gains/ STCG and paper work has been got up and done merely to give a colour of authenticity to the transaction and by creating a facade of legitimate transactions. It is pertinent to state here that the assessee preferred not to explore the possibilities by making any request for cross examination of the persons who had given statements on the basis of which the Directorate of Investigation has unearthed the scam on the issue of obtaining LTCG. The facts of the case as brought-out above, it is self- evident that here is a case where apparent is not real and therefore not sacrosanct. Most importantly, it doesn't accord with the test of human probabilities. In light of the test of human probabilities as laid down in Sumati Dayal Vs CIT , the only reasonable inference likely to be drawn reasonably by a majority is that the assessee's transaction in the manipulated script of M/s Crossanda Solutions Ltd are non-genuine one. Therefore, it is being hold that the assessee has used a pre-arranged device in form of booking of Bogus LTCG ol amount Ks.

41,00,925/- during the relevant year to bring into books his unaccounted income in view of tire elaborate discussion made above, I hereby hold the amount of Rs. 41,00,925/- introduced/credited by the assessee out of these purported share sale receipts during tire financial year 2013-14 (relevant to the Asst. Year 2014-15) in his capital account as his income being unexplained cash credit u/ s 68 of the Income Tax Act (taxable at the rate of 30% as provided u/s 115BBE of the Act). I am further satisfied that the assessee has concealed particulars as well as furnished inaccurate particulars of the Income and it is a fit case for penalty proceedings u/ 271(1)(c) of the Income Tax Act, 1961 which are being separately initiated.”

3. On further appeal, the Ld. CIT(A) also upheld the additions made by the Assessing Officer. Aggrieved, the assessee filed appeal before the Income Tax Appellate Tribunal (in short ‘the Tribunal’) raising the grounds as reproduced above.

4. We may like to mention that the assessee was notified from time to time for hearing of the case but none attended on behalf of the assessee before us, neither any adjournment was filed. On perusal of the record it is found that notice for the hearing on 07/06/2021, which was sent by speed post on 06/04/2021 at the address provided in Form No. 36, has returned unserved with the comment that party “left”. In such circumstances, we were of the opinion that no purpose would be served in issuing further notices at the same address and that would be a futile exercise, therefore, the appeal was heard *ex parte* qua the assessee, after hearing arguments of Learned Departmental Representative.

5. The learned Departmental Representative relied upon the order of the lower authorities and submitted that the assessee has failed to substantiate claim of long-term capital gain before the lower authorities. He submitted that long-term capital gain on sale of shares of “Cressand Solutions Ltd.” has been held to be a

bogus accommodation entries in many other cases by the Tribunal. He submitted that purchase of the shares was made at Rs. 10 per share, however, has been sold within two years at the rate of Rs. 420 per share without any credible financials of said company. According to him, in view of preponderance of the probability, the Ld. CIT(A) is justified in sustaining the addition.

6. We have heard submission of the Learned Departmental Representative and perused the relevant material on record. We find that assessee was allotted 10,000 shares of M/s Smart Champ IT Infra Ltd directly by the company in off-line transaction by way of payment of Cheque of ₹ 1 lakh on 06/09/2011. Subsequently, the company M/s Smart Champ IT Infra Ltd merged with M/s Cressand Solutions Ltd. on 24.01.2013 and the assessee transferred dematerialized shares of M/s Cressanda solutions Ltd. to his Demat account on 14/03/2013. The shares were then subsequently sold on 26/04/2013 through Bombay stock exchange at a consideration of ₹ 42, 00, 925/-. The Assessing Officer has found that inquiries were conducted by the Securities Exchange Board of India (SEBI) and interim ex parte order dated 19/12/2014 was passed by the SEBI for restraining 108 entities including M/s Cressanda Solutions Ltd. and its promoters and directors from accessing the securities market. The Assessing Officer has reproduced chart of price fluctuation in the scrip over a period of four years and found that prices were artificially rigged by the bogus paper companies and after providing accommodation entries of long-term capital gain, the prices of the shares had fallen at their initial prices. The Assessing Officer also recorded statement of the assessee and he

did not find satisfactory explanation of identifying the scrip for investment. He has also reproduced the financial of M/s Cressand Solutions Ltd., which according to him are not supporting huge rise in share price. The Ld. CIT(A) has reproduced summary of the argument of the assessee as under:

“7.2 The main argument of the assessee against the order of the AO is that:

- *the assessee fulfills all conditions specified u/s. 10(38)*
- *though the purchase of securities are off market, the sale of shares was made online on which STT has been duly paid.*
- *the shares were held for approximately 18 to 20 months*
- *copy of d-mat statement, copy of contract notes evidencing payment of STT on sale of shares have been provided.*
- *the assessee has proved the identity of the party, the genuineness of the transaction and the credit worthiness and therefore, section 68 is not applicable.*
- *the appellant has duly discharged his onus of proving that the transaction of purchase and sale of shares was genuine.*
- *the appellant has citec various judgements stating therein that section 68 was not applicable where the assessee has placed substantial documentary evidence to substantiate the genuin ?ness of the transaction.*
- *addition cannot be maae on the basis of mere suspicion and doubt.*
- *the share price of shares are determined by supply and demand and not by credentials in terms of finance or financial capability.*

6.1 After going through the submission of the assessee, the Ld. CIT(A) upheld the transaction as bogus observing as under:

“7.3.1 In the back ground of the above general modus operandi and the method in which these types of transactions are structured, the following facts have been noticed to emerge in the case of the assessee which are discussed in detail as under:

(A) PURCHASE OF SHARES IS AN OFF MARKET TRANACTION:

From the modus operandi adopted by the assessee, it is seen that the purchase transaction has been done off market in physical form. It has been done by preferential allotment of shares. It is a possibility that the transactions may be of the bad shares as discussed in para-7.3.2. This has been carried out in a planned manner to capitalize the black money by taking exemption by claiming the same as long term capital gain.

(B) NOT IN CONFIRMITY WITH SEBI GUIDELINES:

As evident from the above, assessee has purchased the share M/s. Cressenda Solutions Ltd. in physical form and thereafter, the same have been converted into electronic mode. The conversion has been done just a few days prior to the sale. In such case off market transactions, as per SEBI guidelines, a broker cannot issue a brokerage note containing time stamp of stock exchange traded time even though the transactions are not routed through stock exchange and such transactions are off market transactions. SEBI had vide Circular No. SMDRP/Policy/CIT-21/99, dated 14th September'1999 banned all negotiated deals including cross deals and all such deals are required to be executed only on the screens of exchanges in the price and order matching mechanism of the exchange just like any other normal trade. Thus from the above, it can be seen that such transactions are illegal, and are not in conformity with regulatory guidelines.

C) ASSESSEE NOT A REGULAR INVESTOR IN SHARES:

The assessee is not a regular investor in shares. Hence, it is quite surprising as to how he earned a phenomenal return of 42 times within a short span of period which is extremely unusual. The past records of the assessee for the preceding years show that the assessee has never transacted in the stock market. This being the case, the assessee has entered into a sham transaction with the full knowledge of it, so as to convert unaccounted money into accounted money in the guise of capital gains.

D) NATURE OF TRANSACTION:

The nature of transaction itself looks suspicious from the manner it has been conducted i.e. the abnormal appreciation in the value of shares, the mode of payment for purchase of shares not doing the transaction through the normal share dealing procedures. The assessee has shown to have received sale proceeds through cheque whereas purchases were consciously made in cash in the aforesaid manner to facilitate manipulation of the purchase for assessee's benefit.

E) PENNY SHARE:

The shares in which the assessee has claimed to have made a deal, are identified as Penny Shares by the investigation wing of the department because rates of these shares are not based on business results of the companies but same are fluctuated by insider's trading from zero value (negligible price) to very high price and vice versa without any reason or basis to accommodate or generate bogus capital gain or loss.

7.3.2 Moreover, as per the assessment order there was also a specific information that assessee has indulged in non- genuine & bogus capital gain obtained from the transactions of purchase and sale of shares of M/s Cressanda Solutions Ltd., a Mumbai based company. As per the net (<http://www.bseindia.com/markets/MarketInfo/DisplMoticesNCirculars.aspx?Noticeid=%7B1EB5686C-949E-40FD-B25803867A8015E0%7D¬iceno=201303128&dt=03/12/2013&i count=8 & totcount =8 &flag=0>) there is a news article in respect of the Company which is reproduced as under:

Trading members of the Exchange are hereby informed that the under mentioned securities of Cressanda Solutions Limited (Scrip Code 512379) are listed on the Exchange with effect from Thursday, March 14, 2013.

Members are requested to note that, the above security will be a part of pre-open session for IPO and Other category of scrips as per SEBI circular no. CIR/MRD/DP/01/2012 & CIR/MRD/DP/02/2012 dated January 20, 2012.

Initially the securities shall be available for trading in Trade for Trade Segment and subsequently be shifted out of Trade for trade, as per SEBI circular no. SEBI/Cir/ISO/1/2010 dated September 2, 2010

Name of the Company	:	Cressanda Solutions Limited
Registered Office	:	307, Maker Bhavan No. Ill 21, New Marine Lines 3rd Floor, Mumbai - 400 020.
Securities	:	3,03,57,750 Equity Shares@ Rs.10/- each
) Equity Shares issued on Reduction	:	4,50,000 Equity Shares @Rs.10/- each
) Equity Shares issued on Amalgamation	:	2,99,07,750 Equity Shares @ Rs.10/- each

<i>Distinctive numbers</i>	:	1 to 3,03,57,750
<i>Scrip Code</i>	:	512379
<i>Group</i>	:	T
<i>Market Lot</i>	:	1
<i>Face Value & Paid up value</i>	:	Rs. 10/- each fully paid up
<i>Scrip ID on BOLT System</i>	:	CRESSAN
<i>Abbreviated name on BOLT System</i>	:	CRESSANDA SO
<i>ISIN No.</i>	:	INE716D01025

The brief particulars of the scheme of reduction in capital are as mentioned below:

The scheme of reduction in capital of the Company was approved by Hon'ble High Court of Bombay vide its Order dated January 24, 2013.

b) As per the scheme, the issued, subscribed and paid-up equity capital of the company stands reduced from Rs. 900 lacs consisting of 90,00,000 equity shares of face value of Rs. 10/- each to Rs.45 lacs consisting of 4,50,000 equity shares of Rs. 10/- each by way of reduction of share capital by 95%, followed by amalgamation of Smartchamps IT & Infra Limited (Smartchamps) and in consideration thereof Cressanda has issued and allotted 2,99,07,750 equity shares of Rs.10/- each fully paid up in the ratio of 1:1 i.e. 1 equity share of Rs.10/- each of Cressanda for every 1 equity share of Rs.10/- each held in Smartchamps as on the Record Date.

3. As per Exchange Notice No 20130214-22 dated February 14, 2013 the company had fixed February 20, 2013 as record date for giving effect to the reduction of share capital.

4. Trading members of the Exchange may also note that in respect of shares held in physical form, the company has issued new certificates without surrender of the old certificates of the company and accordingly old certificates shall stand cancelled.

5. Trading members of the Exchange are informed that the Equity Share certificates in physical form bearing the under mentioned distinctive numbers of the company as stated alongside shall be good/bad delivery in the market.

Sr. No.	Name of the company appearing on the share certificate	Distinctive Numbers	Date of Issue	Good/Bad Delivery
1	Cressanda Solutions Limited	1- 90,00,000	Before Record date	Bad
2	Cressanda Solutions Limited	1- 4,50,000	After Record date	Good

Hence, trading members should take due care and abundant caution while dealing/receiving/delivering these shares of the company from/to the market.

As per the documents filed by the appellant, the distinctive numbers In respect of Smart Champ IT & Infra Ltd. were 3435001 to 3445000 while after the scheme of amalgamation, the distinctive numbers have not been mentioned. The distinctive number has been mentioned as not applicable, while as per the above clarification there are certain distinctive numbers which are bad delivery and certain distinctive numbers which are good delivery. Even the contract issued by M/s. Sara Securities Pvt. Ltd. does not mention distinctive numbers of the shares sold.

*7.3.3 In this respect, it is also pertinent to mention that though assessee has furnished the proof of source for the purchase transactions, however, it is unbelievable that the shares rolls 42 times over a period of just 01 month from 14.03.2013 (date of listing) to 26.04.2013 (date of sale). The shares post amalgamation were received in the month of March, 2013 at face value of Rs.10/- per share and were sold on 26.04.2013 at Rs.420/- per share. Thus, the entire transactions are against human probability. There is enough material to raise a very strong suspicion, to question the authenticity of the transaction and reject the paper trail created by the appellant and require the assessee to show that the transaction is really one which is above board which the appellant has failed to prove.
.....”*

6.2 In the facts and circumstances of the case, where the purchase has not been done through open platform of recognized stock exchange and the SEBI has also noticed abnormal activities of artificial price rigging in the shares of M/s Cressand Solutions Ltd., the assessee has failed in discharging his onus of substantiating the transaction of long-term capital gain as a real transaction. The order of the Learned CIT(A) on the issue in dispute is well reasoned and we do not find any infirmity the same. Accordingly, we uphold the same. The grounds raised by the assessee are dismissed.

6.3 In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 28th June, 2021

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 28th June, 2021.

RK/-(DTS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi